

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

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GTE Telephone Operating Companies)

CC Docket No. 98-79

GTOC Tariff No. 1)

GTOC Transmittal No. 1148)

**REPLY OF PACIFIC BELL TO COMMENTS IN
SUPPORT OF MCI WORLDCOM AND NARUC
PETITIONS FOR RECONSIDERATION**

Pacific Bell submits this reply to the comments submitted in support of the MCI Worldcom and NARUC petitions for reconsideration and/or requests for clarification of the Commission's GTE ADSL Tariff Order.¹

I. OVERVIEW

Some of the comments in support of the MCI Worldcom and NARUC filings contend there is no record support for the conclusion that ADSL access to the Internet is jurisdictionally interstate.² Others concede the jurisdictional point, but contend the Commission should clarify that its classification is only for jurisdictional purposes. For regulatory purposes, they contend the call should be treated as an enhanced service such that the telecommunications ends where the enhanced service begins.³ None of these points has merit.

¹ Such comments were submitted by KMC Telecom, Transwire Communications, RCN Telecom Services, ACI Corp., CTSI, Telecommunications Resellers Association, Hyperion Telecommunications, Logix Communications, ALTS, California Public Utility Commission, Washington Utilities and Transportation Commission, and Minnesota Department of Public Service *et al.*

² KMC Telecom, p. 9.

³ ACI Corp., p. 3; CTSI, p. 3.

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Reply Comments of Pacific Bell
CC Docket No. 98-79
January 19, 1999

II. THE RECORD DOES SUPPORT THE CONCLUSION THAT ADSL ACCESS TO THE INTERNET IS JURISDICTIONALLY INTERSTATE

The Internet is part of the World Wide Web. No one seriously disputes that fact or that you can communicate on the Internet with others, not only throughout this country, but around the world.

Can there also be intrastate uses of ADSL technology as claimed by Hyperion, Transwire, and KMC? Absolutely. Subscribers can use the technology to access corporate local area networks or LANs or for non-Internet applications, but that does not mean such access is necessarily limited to or even primarily used for intrastate or non-Internet applications. For example, in house counsel for a multistate company in Texas may use ADSL to access the local company intranet, and also use it to e-mail company attorneys or clients in other states, to communicate with outside counsel in Washington, D.C., to contact the FCC's web site in D.C., or to contact and do research on LEXIS/NEXIS or WESTLAW databases located out of state.

Indeed, while Hyperion suggests it may have some preliminary evidence showing 90% or greater intrastate use,⁴ while Transwire suggests there are Extranet applications,⁵ and while KMC references a process called "caching" or "mirroring" of web sites on local servers,⁶ their references prove nothing. Hyperion, for example, does not disclose the arrangement it studied and does no more than reference what it calls "preliminary results."

⁴ Hyperion, p. 2.

⁵ Transwire, pp. 3-4.

⁶ KMC, pp. 9-10.

Both logic and empirical "real" data support entirely different conclusions. Park Region Telephone Company conducted an analysis and determined that less than two percent of the hits on its Minnesota web site were intrastate.⁷ The results of SBC's analysis were similar showing that 92% to 99% of the Internet usage it carries is interstate depending upon the State.⁸ Moreover, the nation's largest Internet Provider – America On Line (AOL) – has its service located in Virginia and calls to its service from anywhere else would be obviously interstate.

While there may be Extranet uses as Transwire claims, the fact remains - as pointed out by a group of retail internet service providers - that "today essentially the only reason that a consumer or a small business would order xDSL is to obtain high-speed access to the Internet."⁹ In other words, that ADSL technology can or may be used for other purposes does not negate the fact that its primary use is to provide interstate access to the Internet and the World Wide Web.

KMC's claim is even less logical. The utility and, indeed, much of the fun of the Internet is access to the World Wide Web, not to some local database. And no local database is ever going to be large enough to duplicate or capture all of the data and information that are available on the World Wide Web. "Caching" and "mirroring" also would not address the preferences of the consumer market for wide area chat lines,

⁷ *Comments of Park Region Telephone Company*, CC Docket No. 80-286, p. 1.

⁸ A summary of SBC's analysis is attached.

⁹ *Comments of Retail Internet Service Providers*, CC Docket 98-146, p. 7.

e-mail, interactive games and Internet telephony.¹⁰ In addition, "caching" may not be the answer. One company recently reported that "network performance actually went down with caching."¹¹ So "caching" and "mirroring" are not going to change the fundamental nature of the Internet or transform it into one that only has intrastate use.

III. CONGRESS EXPRESSLY RECOGNIZED IN THE '96 ACT THAT ACCESS TO INFORMATION SERVICE PROVIDERS IS GOVERNED BY THIS COMMISSION'S REGULATIONS.

RCN Telecom makes the novel argument that ADSL is not "exchange access" or an "access service" as those terms are used in connection with the provision of telephone services, and contends those terms only apply to "telephone toll services."¹² The implication is that this Commission's jurisdiction over "exchange access" and "access service" is limited solely to when they are used to provide "toll services" and that it does not have jurisdiction over calls by Internet subscribers to the Points of Presence (POPs) of Information Service Providers (ISPs).

Nothing could be further from the truth. In fact, in the only provision of the '96 Act dealing expressly with information access or access to the service of ISPs, Congress explicitly recognized that such access is subject to the Commission's regulations and

¹⁰ Consumers use the Internet for e-mail as an alternative to facsimiles and Internet Telephony as an alternative to regular long distance messaging because they are cheaper than the older phone-based technologies. See *USA TODAY*, Tuesday, February 10, 1998, Section: Money, Page 1B. However, the incentive to move to alternatives would not be there in the situation described by KMC. Why log on to your PC and then access the Internet, if you can pick up your phone and call across town with no per minute charges?

¹¹ *Network World*, "Cache Beats Back Bandwidth Blues," Section: APPS; p. 45 (November 16, 1998).

¹² RCN Telecom, pp. 3-4.

specifically grouped it in the same category as access to interexchange carriers. Section 251(g) of the Act provides:

"On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier, to the extent it provides wireline services, shall provide exchange access, information access, and exchange services for such access to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment of the Telecommunications Act of 1996 under any court order, consent decree, or regulation, order, or policy of the Commission, until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after the date of enactment." [Emphasis added].

In both instances, Congress specifically isolated and distinguished interexchange and information service access from the local services to which the Act's other provisions apply. Consistent therewith, the Commission determined in its *Interconnection Order* that the reciprocal compensation provisions of the Act do not apply to such traffic.¹³

IV. THE COMMISSION PROPERLY REJECTED THE ARGUMENT THAT ADSL ACCESS TO THE INTERNET TERMINATES AT THE ISP.

Some of the comments suggest that the Commission has abandoned the distinction between "telecommunications" and "information services", and that it should have treated ADSL access as terminating at the ISP (*i.e.*, "for regulatory purposes telecommunications ends where information service begins.")¹⁴ The Commission

¹³ *First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, released August 8, 1996, ¶¶ 1034 & 1035.

¹⁴ CTSL, pp. 3-5; KMC, pp.13-15; Logix, pp. 2-5.

properly rejected this argument for the reason that a transmission component is still needed for users to access information after the call arrives at the POP of the ISP.¹⁵

If the comments making this argument were right, then the incumbent local exchange carriers (ILECs) would only be responsible for the call set-up time. But they make no such suggestion. Indeed, the very motive behind the argument for treating these calls as local and as ending at the ISP is to obtain compensation for terminating every minute of every call to the ISP from the ILEC and thereby to create a subsidy. As noted, this is not a proper interpretation of the Act and ignores years of Commission precedent and jurisdictional analysis.¹⁶

¹⁵ *Memorandum Opinion and Order*, CC Docket No. 98-79, released October 30, 1998, ¶¶ 17 & 20. [As explained in the *Universal Service Report to Congress*, because information services are offered via telecommunications, they necessarily require a transmission component in order for users to access information. We, therefore, analyze ISP traffic as a continuous transmission from the end user to a distant Internet site.]

¹⁶ *See Pacific Bell Opposition*, CC Docket No. 98-79, n. 8.

V. CONCLUSION

Despite their best efforts, the comments in support of the MCI Worldcom and NARUC Petitions for Reconsideration and/or Requests for Clarification do little to shore up the Petitioners' claims. The Commission correctly ruled that ADSL access to the Internet is interstate, its decision is amply explained, and it is fully supported by the evidence.

Respectfully submitted,

PACIFIC BELL

By: 

Robert M. Lynch
Roger K. Toppins
Mark Royer
One Bell Plaza, 30th Floor
Dallas, TX 75202
214-464-2217

Attorneys for Pacific Bell

January 19, 1999

SBC ANALYSIS: SUMMARY AND RESULTS

The ISP performed a high level analysis of the jurisdictional nature (Interstate versus Intrastate) of its customers' Internet traffic. This traffic is grouped into three major classes of service: E-mail, Newsgroup Reading and Surfing of Web Sites (browsing). The ISP defines Newsgroup reading as the posting and reading of Usenet articles. "Browsing" is defined as all other forms of Internet usage, including but not limited to hyper-text transfer protocol (http), file transfer protocol (ftp), telnet, and games data packet routing.

Based on the ISP's analysis, the three classes of service provided can be broken down into their respective percentage of all the ISP's Internet traffic:

E-mail traffic	36.44
News traffic	27.47
Browse traffic	39.09

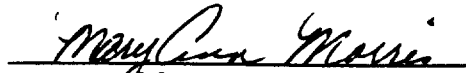
In a sampling of registered Internet domains existing in the United States, 7.1 percent exists in Texas. The same sampling showed Missouri to have .06 percent, Arkansas to have .9 percent, Kansas to have 1.7 percent and Oklahoma to have 1.7 percent. The remaining 45 States have 88.53% of the domains in the sample. If all traffic across the Internet is normal, the ISP extrapolated that the higher a density of registered domains in a state, the higher amount of traffic should be generated to that state from external states. The ISP sends all E-mail and News articles from a Central Site in Texas by the ISP to the Internet. Because all other states in the ISP's network send E-mail and News articles to the central site, nearly all of the e-mail and news posts are Interstate. Based on the ISP's analysis, Texas has a higher percentage of intrastate traffic than the other states in which it provides service. Given the above data and assumptions, the ISP estimates the following usage per state to be Interstate and Intrastate:

<u>State</u>	<u>Percent Interstate</u>	<u>Interstate Breakdown By Service</u>
ARKANSAS	99.67	
E-mail		36.44
News Reading		27.47
Browsing		35.76
KANSAS	99.28	
E-mail		36.44
News Reading		27.47
Browsing		35.37

<u>State</u>	<u>Percent Interstate</u>	<u>Interstate Breakdown By Service</u>
MISSOURI	99.99	
E-mail		36.44
News Reading		27.47
Browsing		36.09
OKLAHOMA	99.38	
E-mail		36.44
News Reading		27.47
Browsing		35.47
TEXAS	92.88	
E-mail		33.85
News Reading		25.51
Browsing		33.52

Certificate of Service

I, Mary Ann Morris, hereby certify that the foregoing "Reply Comments of SBC Communications," in CC Docket No. 98-79 has been served on January 19, 1999 to the Parties of Record.


Mary Ann Morris

January 19, 1999

MAGALIE ROMAN SALAS
OFFICE OF THE SECRETARY
FEDERAL COMMUNICATIONS COMMISSION
445 - 12TH STREET SW
TW-A325
WASHINGTON DC 20554
(ORIGINAL & 4 COPIES)

ITS
1231 20TH ST NW
WASHINGTON DC 20036

CHIEF, COMPETITIVE PRICING DIVISION
1919 M STREET, NW
ROOM 518
WASHINGTON DC 20554

MARK C ROSENBLUM
J MANNING LEE
AT&T
295 NORTH MAPLE AVENUE
ROOM 3245H1
BASKING RIDGE NJ 07920

FRANK W LLOYD
MINTZ LEVIN COHN FERRIS GLOVSKY & POPEO
701 PENNSYLVANIA AVENUE NW SUITE 900
WASHINGTON D.C. 20004-2508

EDWARD A YORKGITIS
KELLEY DRYE & WARREN
1200 19TH STREET NW 5TH FLOOR
WASHINGTON D.C. 20038

JEFFREY BLUMENFELD
GLENN B MANISHIN
STEPHANIE A JOYCE
BLUMENFELD & COHEN
TECHNOLOGY LAW GROUP
1615 M STREET NW SUITE 700
WASHINGTON D.C. 20036

ALAN BUZACOTT
RICHARD S WHITT
MCI WORLDCOM INC
1801 PENNSYLVANIA AVENUE NW
WASHINGTON D.C. 20006

RICHARD M RINDLER
PAMELA S ARLUK
SWIDLER BERLIN SHEREFF FRIEDMAN L L P
3000 K STREET NW
SUITE 300
WASHINGTON D.C. 20007

ERIC J BRANFMAN
MORTON J POSNER
SWIDLER BERLIN SHEREFF FRIEDMAN L L P
3000 K STREET NW
WASHINGTON D.C. 20007

CHERYL CALLAHAN
NEW YORK PUBLIC SERVICE COMMISSION
2 EMPIRE STATE PLAZA
ALBANY NY 12223-1350

DONNA N LAMPERT
JAMES A KIRKLAND
MINTZ LEVIN COHN FERRIS GLOVSKY
& POPEO P C
701 PENNSYLVANIA AVENUE NW SUITE 900
WASHINGTON D.C. 20004-2808

RICHARD J METZGER
ALTS
888 17TH STREET NW SUITE 900
WASHINGTON D.C. 20006

LAURA PHILLIPS
DOW LOHNES & ALBERTSON
1200 NEW HAMPSHIRE AVE NW
SUITE 800
WASHINGTON D.C. 20036

BARBARA A DOOLEY
CIX
1041 STERLING ROAD
SUITE 104A
HERNDON VA 20170

MICHAEL T WEIRICH
OREGON PUBLIC UTILITY COMMISSION
DEPARTMENT OF JUSTICE
1162 COURT STREET NE
SALES OR 97310

BRAD E MUTSCHELKNAUS
JONATHAN E CANIS
KELLEY DRYE & WARREN L L P
1200 19TH STREET NW 5TH FLOOR
WASHINGTON D.C. 20036

ROBERT J AAMOTH
KELLEY DRYE & WARREN L L P
1200 19TH STREET NW 5TH FLOOR
WASHINGTON D.C. 20036

RODNEY L JOYCE
SHOOK, HARDY & BACON
1101 PENNSYLVANIA AVENUE NW
SUITE 800
WASHINGTON D.C. 20004-2615

STEVEN GOROSH
NORTHPOINT COMMUNICATIONS INC
222 SUTTER STREET
SAN FRANCISCO CA 94108

JANE JACKSON
CHIEF COMPETITIVE PRICING DIVISION
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET NW ROOM 518
WASHINGTON D.C. 20554

JUDITH A NITSCHÉ
CHIEF TARIFF & PRICE ANALYSIS BRANCH
COMPETITIVE PRICING DIVISION
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET NW ROOM 518
WASHINGTON D.C. 20554

ROBERT PEPPER
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET NW ROOM 822
WASHINGTON D.C. 20554

HAROLD FURCHTGOTT-ROTH
COMMISSIONER
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET NW ROOM 802
WASHINGTON D.C. 20554

MICHAEL K POWELL
COMMISSIONER
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET NW ROOM 844
WASHINGTON D.C. 20554

ANATOLE NAGY
ATU TELECOMMUNICATIONS
600 TELEPHONE AVENUE MS B
ANCHORAGE AK 99503

JAMES D SCHLICHTING
COMPETITIVE PRICING DIVISION
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET NW ROOM 518
WASHINGTON D.C. 20554

WILLIAM E KENNARD
CHAIRMAN
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET NW ROOM 814
WASHINGTON D.C. 20554

SUSAN NESS
COMMISSIONER
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET NW ROOM 832
WASHINGTON D.C. 20554

GLORIA TRISTANI
COMMISSIONER
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET NW ROOM 828
WASHINGTON D.C. 20554

GAIL L POLIVY
GTE SERVICE CORPORATION
1850 M STREET NW
SUITE 1200
WASHINGTON DC 20036

M ROBERT SUTHERLAND
RICHARD M SBARATTA
BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS INC
1155 PEACHTREE STREET NE
ATLANTA GA 30309-3610

RICH LERNER
FEDERAL COMMUNICATIONS COMMISSION
ROOM 518
1919 M STREET N W
WASHINGTON DC 20554

TAMARA PREISS
FEDERAL COMMUNICATIONS COMMISSION
ROOM 518
1919 N STREET N W
WASHINGTON DC 20554

JOHN F RAPOSA
GTE SERVICE CORPORATION
600 HIDDEN RIDGE
HQE3J27
IRVING TX 75038

R MICHAEL SENKOWSKI
GREGORY J VOGT
BRYAN N TRAMONT
WILEY REIN & FIELDING
1776 K STREET N W
WASHINGTON DC 20006

JANET S LIVENGOD ESQ
DIRECTOR OF REGULATORY AFFAIRS
HYPERION TELECOMMUNICATIONS INC
DDI PLAZA TWO
500 THOMAS STREET
SUITE 400
BRIDGEVILLE, PA 15017-2838

SUSAN M EID
MEDIAONE GROUP INC
1919 PENNSYLVANIA AVENUE NW
SUITE 610
WASHINGTON DC 20006

MICHAEL DUKE
KMC TELECOM INC
3075 BRECKENRIDGE BOULEVARD
SUITE 415
DULUTH GA 30096

DHRUV KANNA
COVAD COMMUNICATIONS COMPANY
2230 CENTRAL EXPRESSWAY
SANTA CLARA CA 95050

WILLIAM IEBY
VIRGINIA STATE CORPORATION COMMISSION
DIVISION OF COMMUNICATIONS
1300 EAST MAIN STREET
P O BOX 1197
RICHMOND VA 23219

JEFFREY D GOLTZ
WASHINGTON UTILITIES & TRANSPORTATION
COMMISSION
1400 SOUTH EVERGREEN PARK DRIVE SW
P O BOX 40128
OLYMPIA WA 98504-0128

MITCHELL LAZARUS
FLETCHER HEALD & HEILDRETH
1300 NORTH 17TH STREET
ELEVENTH FLOOR
ARLINGTON VA 22209

ELLEN S LEVINE
CALIFORNIA PUBLIC UTILITIES COMMISSION
5050 VAN NESS AVENUE
SAN FRANCISCO CA 94102

LAWRENCE MALONE
NEW YORK STAT DEPT OF PUBLIC SERVICE
3 EMPIRE STATE PLAZA
ALBANY NY 12223

BARRY PINLES
GST TELECOM INC
4001 MAIN STREET
VANCOUVER WA 98663

GARY L PHILLIPS
AMERITECH
1401 H STREET NW
SUITE 1020
WASHINGTON CD 20005

DAVID E SCREVEN
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P O BOX 3265
HARRISBURG PA 17105

JONATHAN JACOB NADLER
SQUIRE, SANDERS & DEMPSEY
1201 PENNSYLVANIA AVE NW
WASHINGTON DC 20044

DANA FRIX
MICHAEL W FLEMING
SWIDLER BERLIN SHEREFF FRIEDMAN L L P
3000 K STREET NW SUITE 300
WASHINGTON DC 20007

RUSSELL M BLAU
MICHAEL W FLEMING
SWINDLER BERLIN SHEREFF FRIEDMAN L L P
3000 K STREET N W
WASHINGTON DC 20007

LAWRENCE W KATZ
BELL ATLANTIC
1320 NORTH COURT HOUSE ROAD
8TH FLOOR
ARLINGTON VA 22201

GENEVIEVE MORELLI
EXECUTIVE VICE PRESIDENT AND GENERAL
COUNSEL
COMPTTEL
1900 M STREET NW SUITE 800
WASHINGTON DC 20036

BRIAN CONBOY
THOMAS JONES
WILLKIE FARR & GALLAGHER
THREE LAFAYETTE CENTRE
1155 21ST STREET NW
WASHINGTON DC 20036

LAWRENCE E SARJEANT
LINDA KENT
KEITH TOWNSEND
JOHN W HUNTER
USTA
1401 H STREET NW SUITE 600
WASHINGTON DC 20005

JOHN L CLARK
GOODIN, MACBRIDE, SQUERI, SCHLOTZ &
RITCHIE L L P
505 SANSOME STREET 9TH FLOOR
SAN FRANCISCO CA 94111

WILLIAM T LAKE
JOHN H HARWOOD II
LYNN R CHARYTAN
DAVID M SOHN
WILMER, CUTLER & PICKERING
2445 M STREET NW
WASHINGTON DC 20037

ROBERT B MCKENNA
U S WEST INC
SUITE 700
1020 19TH STREET NW
WASHINGTON DC 20036

CINDY Z SCHONHAUT
ICG COMMUNICATIONS INC
161 INVERNESS DRIVE
ENGLEWOOD CO 80112

ALBERT H KRAMER
MICHAEL CAROWITZ
DICKSTEIN SHAPIRO MORIN & OSHINSKY L L P
2101 L STREET NW
WASHINGTON DC 20037-1526

RUTH MILKMAN
THE LAWLER GROUP
7316 WISCONSIN AVENUE SUITE 400
BETHESDA MD 20814

J DANIEL LONG
ASSISTANT COMMISSION ATTORNEY
NORTH CAROLINA UTILITIES COMMISSION
P O BOX 29510
RALEIGH NC 27626-0510

CHARLES D GRAY
JAMES BRADFORD RAMSAY
NARUC
1100 PENNSYLVANIA AVE NW
P O BOX 684 SUITE 608
WASHINGTON DC 20044-0684

STEVEN T NOURSE
ASSISTANT ATTORNEY GENERAL
PUBLIC UTILITIES SECTION
180 E BROAD ST 7TH FLOOR
COLUMBUS OH 43215

STEPHEN J DAVIS
CHIEF
OFFICE OF POLICY DEVELOPMENT
PUC OF TEXAS
1701 N CONGRESS AVENUE
P O BOX 13326
AUSTIN TX 78711-3326

GEORGE VRADENBURG III
WILLIAM W BURRINGTON
JILL A LESSER
STEVEN N TEPLITZ
AMERICAN ONLINE INC
1101 CONNECTICUT AVENUE NW SUITE 400
WASHINGTON DC 20036

KEVEN TIMPANE
ESTHER H ROSENTHAL
FIRST WORLD COMMUNICATIONS INC
9333 GENESSE AVENUE
SAN DIEGO CA 92121

DAVID N PORTER
MCI WORLDCOM INC
1120 CONNECTICUT AVENUE NW
SUITE 400
WASHINGTON DC 20036

CHARLES C HUNTER
CATHERINE M HANNAN
HUNTER COMMUNICATIONS LAW GROUP
1620 I STREET N W
SUITE 701
WASHINGTON DC 20006

RANDALL B LOWE
JULIE A KAMINSKI
RENEE ROLAND CRITTENDON
PIPER & MARBURY L L P
1200 NINETEENTH STREET NW
WASHINGTON DC 20036

JEANNIE SU
DAN LIPSCHULTZ
LIANNE KNYCH
ASSISTANT ATTORNEYS GENERAL
SUITE 1200 NCL TOWER
445 MINESOTA STREET
ST PAUL MN 55101-2130